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Franklin Gray Patents, LLC
Tel: 405-812-5613
Fax: 405-440-2465

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In re the Application of:

Leland James Wiesehuegel, *et al.*   )

Serial Number: 09/726,009   )   Group: 3628

Docket Number: AUS9-2000-0738-US1   )   Examiner: Clement B. Graham

Filed on:11/29/2000   )

For: "System and Method for Online   )
Offer and Bid Management with Sealed   )
Bids"   )

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APPEAL BRIEF *(revised)*

Real Party in Interest per 37 CFR §41.37(c)(1)(i)

The subject patent application is owned by International Business Machines Corporation of Armonk, NY.

Related Appeals and Interferences per 37 CFR §41.37(c)(1)(ii)

This application is related to US Patent Application serial number 09/714,726, which is currently under appeal by appellant. No decision has been reached by the Board in this appeal.

Status of Claims per 37 CFR §41.37(c)(1)(iii)

On May 24, 2005, appellant appealed from the final rejections of claims 1 - 21. An amendment to the independent claims 1, 7, and 13, was entered on May 10, 2004. All other claims are in their originally filed state. The claims are reproduced in the Appendix to this Appeal Brief.

Status of Amendments after Final Rejections per 37 CFR §41.37(c)(1)(iv)

No amendments to the claims have been submitted or entered after final rejections.

Summary of the Claimed Subject Matter per 37 CFR §41.37(c)(1)(v)

The present invention provides sales offering method and system for restricting access by traders to collected sealed bids in an online auction-like business-to-business offering and bidding system *(pg. 12 lines 8 - 14)*. In this particular business-to-business offering arrangement, a "trader" is an intermediary third party *(Fig. 2 #24)* between a purchasing broker *(Fig. 2 #25)*, and a offeror *(Fig. 2 #21)*. This type of three-party auction-like offering system is employed by some manufacturers to promote sales of products to retail outlets via a trader or broker *(pg. 12 lines 2 - 3)*.

A computer-readable bid repository of collected bids *(pg. 15 lines 8 - 10, Fig. 5 #52)* communicative to an online offering and bidding system *(pg. 15 line 10 to pg. 16 line 5, Fig. 5 #51)* is provided by the invention, in which the collected bids each have a "seal status" indication field *(pg. 19 line 22 - pg. 20 line 4)* .

Responsive to querying the bid repository by a trader for bids which match parameters of a Broker Profile Matrix *(Fig. 4)* associated with the bidding-party (e.g. the broker) *(Fig. 7 #73 and #76, pg. 20 lines 11 - 14)*, only bids which are indicated as being unsealed by the seal status indication field (and which match the Broker Profile Matrix parameters), the details of the unsealed are presented to the trader and the details of the sealed bids are prevented from presentation (pg. 20, lines 11 - 14).

Thus, through employing the present invention, a three-party business-to-business offering system is enabled to suppress showing details of sealed bids to traders, while showing details only of unsealed bids which match the Broker's Profile Matrix.

Grounds for Rejection For Which Review is Sought per 37 CFR §41.37(c)(1)(vi)

Review by the Board of the rejections of Claims 1 - 21 under 35 U.S.C. §103(a) over US Patent 6,598,029 to Johnson (hereinafter "Johnson") in view of US Patent 5,136,501 to Silverman (hereinafter "Silverman") is hereby requested.

Arguments per 37 CFR §41.37(c)(1)(vii)

In the first Office Action on the merits, claims 1 - 21 were rejected under 35 U.S.C. §103(a) over US Patent 6,055,518 to Franklin in view of US Patent 6,161,099 to Harrington. Applicant responded by amending independent claims 1, 7 and 14.

In the second Office Action on the merits, the previous rejections over Franklin in view of Harrington were withdrawn, and new rejections were made for claims 1 - 21 under 35 U.S.C. §103(a) over Johnson in view of Silverman. The rejections were made final.

Rejections of Claims 1, 7, and 14 under 35 U.S.C. §103(a) over Johnson in view of Silverman

In the rationale for the final rejections of Claims 1, 7, and 14 over Johnson in view of Silverman, it was stated that Johnson does not teach a Broker Profile Matrix or handling of sealed bids, and thus Silverman was combined with Johnson. Appellant contends that Silverman also does not teach our Broker Profile Matrix or handling sealed bids, that Silverman's term "anonymous" has been erroneously equated to our "sealed" term, and that Silverman's anonymous credit limit values has been erroneously equated to our Broker Profile Matrix.

"Anonymous" Is Not The Same As "Seal-Bid"

Silverman is directed towards "anonymous" trading processes and systems where the *identities* of the parties, but not the *price-quantity* details of their bids, are kept secret from each other. Silverman has contrasted anonymous trading systems to a "conversational video trading system", in which the counterparties can determine the *identity* of each other, as explained in Silverman's disclosure (col. 1 lines 37 - 47, emphasis added):

> ... Such systems, while providing rapid video conversation capability, **are not anonymous systems** nor do they provide for **automated anonymous trading** such as is possible in a matching system. Of course, conversational dealing systems have their place in the market and serve particular needs where appropriate. **However, anonymous matching systems are also often desired and, by their very nature, do not normally employ a conversation capability since the parties**

> to the transactions are unknown until the transaction has been
> completed. ...

Silverman returns to the need of keeping the identities of the bidding and the offering
parties confidential or anonymous until matching bids and offers are found throughout their
disclosure, as this is a main object of their invention.

Silverman's offer and bid matching is done automatically if the terms match and if each
party's credit limit has not been exceeded. The credit limit for each party is also maintained
"anonymously" by the system such that neither party is aware of their credit limit values (col. 2,
lines 41 - 43, emphasis added):

> ...with these counterparty credit limits not being provided to the
> keystations and, thus, **the gross counterparty credit limits are kept**
> **anonymous in the system. The only time that the keystation is made**
> **aware of the parties involved in the transaction is after the**
> **transaction has been completed,** but they are preferably never made
> aware of the counterparty credit limits assigned to them. ...

and (col. 2, lines 50 - 53):

> ..Thus, in the system of the present invention, the host may anonymously
> inhibit the occurrence of trades even though the price and quantity would
> otherwise match....

In Silverman's system, the counterparties' *identities* are kept confidential or anonymous
from each other, but the *quantity and price* information is not kept confidential. For example,
see Silveman's figures 4 and 5 which clearly illustrate bidder and offeror amounts, as well as col.
4 lines 12 - 24 (emphasis added):

> ... Preferably, the host computer, which dynamically updates the prices
> based on the best available bids in the system, processes the matching
> transactions for a given trading instrument in time order entry to the
> matching system, with the matching criteria further comprising an order
> priority based on price, quantity type and time order entry. With respect to

quantity type, it may be a primary quantity type or a more quantity type,
**with the primary quantity type being disclosed to the other
keystations in the system** while the more quantity type is maintained as
a hidden value of the additional quantity beyond the disclosed primary
quantity at which a given keystation is willing to trade for a given trading
instrument. ...

As such, in Silverman's system, each counterparty such as an offeror or bidder is allowed to see *price-quantity* details of other bidding parties.   The counter parties, however, are not allowed to know the *identities* of the other parties, so long as their credit limits are not exceeded, which is what makes their system an "anonymous" bidding system.

As the term "anonymous" is employed by Silverman, it means keeping the *identities* of the counterparties (e.g. offerors and bidders) secret from each other, but the bidders' price-quantity details are disclosed to other parties. A "sealed" bid, however, does not necessarily keep *identities* secret, but keeps the price-quantity details secret until the end of the bidding period (e.g. until the auction closes).   Sealed bids are well understood in the field of auctioning, and our use of this term is consistent with customary definitions. For example, one online resource www.OnlineAuction.com explains a "sealed bid auction" as follows:

Sealed Bid Auction
Seller has the choice to list their auction with or without entering an optional reserve price. Bidder places a sealed bid, **the amount not displayed**. The item is sold to the high bidder placing the winning sealed bid meeting or exceeding the Sellers optional reserve price. Sealed Bid auctions **display the current number of bids received**.**The winning sealed bid amount is displayed at end of auction duration**.

The following table summarizes and compares the two definitions:

	Disclosure of Bidder's Identities to Other Bidding Parties	Disclosure of Bid Details (e.g. price and/or quantities) to Other Bidding Parties
Silverman's "anonymous trading"	None. Identities are kept secret	Yes. Bid amounts and history are shown.
"Sealed-bid" Auctions	Identities may or may not be kept secret	No. Bid details are always kept secret until close of auction.

Thus, a "sealed-bid" auction is not the same as an "anonymous trading system". Further, Silverman is silent as to providing an unconventional definition of "anonymous", so the conventional meaning must be used to interpret the teachings of Silverman's disclosure.

"Counter Party Credit Limits" Are Not The Same As Broker Profile Matrix

Silverman's "counter party credit limits" are just and only that - numerical limits as to the *credit* which can be extended between parties during a transaction. Silverman is silent as to the information and functionality we have described and claimed regarding our Broker Profile Matrix (e.g. commodity category, geographic region, etc.). Thus, Silverman fails to teach our Broker Profile Matrix as we have defined it:

A broker profile matrix is disclosed in FIGURE 4. For each broker, a broker profile matrix is defined, which is a two-dimensional table for location and category in this preferred embodiment. It will be recognized, however, by those skilled in the art that such a broker profile matrix may be multidimensional beyond the two-dimensional example shown, or single dimensional. In this example of FIGURE 4, the locations are indexed against the plurality of categories, and then a logical enabler, such as a Boolean flag, is recorded for each combination of location and category pairs. A profile matrix defines the "entitlement" for a particular broker. Available products or services which match the

location-category parameter pairs in a broker's entitlement profile matrix are made available to that broker, and products and services which do not meet the parameters of the profile matrix are not presented for bidding to that broker.   For example in FIGURE 4, the completed profile matrix for a hypothetical broker defines that the broker who is entitled to receive offerings for category _1 products in location_1 and location_3, and for category_2 products only in location_1, and for category_Y products only in location_1. The hypothetical broker of this example is not authorized or entitled to receive offerings for any other location-category parameter pair. (Pg. 14 line 13 - pg. 15 line 7)

Silverman's counterparty credit limits are devoid of category and geographic locale parameters, and thus this step, element or limitation of Claims 1, 7, and 21 is not taught by Johnson in view of Silverman.

Rejections of Claims 2 - 6, 8 - 13, and 15 - 21 under 35 U.S.C. §103(a) over Johnson in view of Silverman

Claims 2 - 6, 8 - 13, and 15 - 21 depend from claims 1, 7, and 14, respectively, and therefore incorporate the steps, elements or limitations not taught by Johnson in view of Silverman as discussed in the forgoing paragraphs.

Summary

For the foregoing reasons, it is submitted that the rejections of Claims 1 - 21 are erroneous for the following reasons:

    (a)   our claims have not been examined in light of our specification and the definitions for our terminology provided therein;

    (b)   the rationale for the rejections fails to employ industry-accepted definitions of terms when interpreting claim terms for which a reference disclosure is silent; and

    (c)   the entirety of the disclosure of the cited art was not considered in order to determine the meaning of the terms used in the cited art.

For these reasons, appellant requests reversal of the rejections of Claims 1 - 21.

Respectfully,

/ *Robert Frantz* /

Agent for Appellant(s)
Robert H. Frantz, Reg. No. 42,553
Tel: (405) 812-5613

Franklin Gray Patents, LLC
P.O. Box 23324
Oklahoma City, OK 73127
Tel: 405-812-5613
Fax: 405-440-2465

Claims Appendix
per 37 CFR §41.37(c)(1)(viii)

Clean Form of Amended Claims

Claim 1 (previously amended):

A sales offering method for restricting access by traders to collected online sealed bids in an online offering and bidding system, said method comprising the steps of:

providing a computer-readable bid repository of collected bids communicative to an online offering and bidding system , said collected bids each having an associated seal status indication field;

querying said bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed by said seal status indication field, said trader representing a intermediary third party between a bidder and a offeror; and

presenting via a computer user interface said unsealed bids to said trader thereby preventing presentation of bids which are sealed to traders.

Claim 2 (original):

The method as set forth in Claim 1 wherein said step of providing a computer-readable bid repository comprises providing a computer database in which each sealed bid and unsealed bid are represented by one or more database records.

Claim 3 (original):

The method as set forth in Claim 2 wherein said step of providing database records representing sealed bids and unsealed bids comprises providing database records which include a field indicating a bid status as sealed or unsealed.

Claim 4 (original):

The method as set forth in Claim 2 wherein said step of providing database records representing

sealed bids and unsealed bids comprises providing database records which include a field indicating a

bid seal expiration time.

Claim 5 (original):

The method as set forth in Claim 1 wherein said step of unsealing one or more sealed bids in said bid

repository through a restricted process comprises providing a secure system administrator console and

identification process which allows only an authorized system administrator to change sealed bids to

unsealed bids.

Claim 6 (original):

The method as set forth in Claim 1 wherein said step of unsealing one or more sealed bids in said bid

repository through a restricted process comprises:

    providing a bid seal expiration time parameter with each sealed bids;

providing a system clock or timer;

    comparing each bid seal expiration time parameter with a current status of a system clock or

timer responsive; and

    determining that bids for which bid seal expiration time parameters which are before or less

than the current status of a system clock or timer are unsealed bids.

Claim 7 (previously amended):

A computer-readable medium containing program code for a sales offering computer system for restricting access by traders to collected online sealed bids in an online offering and bidding system, said program code when executed by a sales offering computer system causes the sales offering computer system to perform the steps of:

providing a computer-readable bid repository of collected bids communicative to an online offering and bidding system , said collected bids each having an associated seal status indication field;

querying said bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed by said seal status indication field, said trader representing a intermediary third party between a bidder and a offeror; and

presenting via a computer user interface said unsealed bids to said trader thereby preventing presentation of bids which are sealed to traders.

Claim 8 (original):

The computer-readable medium as set forth in Claim 7 wherein said program code for providing a computer-readable bid repository comprises program code for providing a computer database in which each sealed bid and unsealed bid are represented by one or more database records.

Claim 9 (original):

The computer-readable medium as set forth in claim 8 wherein said program code for providing database records representing sealed bids and unsealed bids comprises program code for providing database records which include a field indicating a bid status as sealed or unsealed.

Claim 10 (original):

The computer-readable medium as set forth in claim 8 wherein said program code for providing database records representing sealed bids and unsealed bids comprises program code for providing database records which include a field indicating a bid seal expiration time.

Claim 11 (original):

The computer-readable medium as set forth in claim 7 wherein said program code for unsealing one or more sealed bids in said bid repository through a restricted process comprises program code for providing a secure system administrator console and identification process which allows only an authorized system administrator to change sealed bids to unsealed bids.

Claim 12 (original):

The computer-readable medium as set forth in claim 7 wherein said program code for unsealing one or more sealed bids in said bid repository through a restricted process comprises program code for causing the sales offering computer system to perform the steps of:

providing a bid seal expiration time parameter with each sealed bids;

accessing or reading a system clock or timer;

comparing each bid seal expiration time parameter with a current status of a system clock or timer responsive; and

determining that bids for which bid seal expiration time parameters which are before or less than the current status of a system clock or timer are unsealed bids.

Claim 13 (previously amended):

 A sealed bid sales offering system in a computer network, said computer network enabling communications between said sales offering system and trader consoles, said offering system comprising:

  a bid database containing collected bids, said database being accessible and queriable by said sales offering system , said collected bids each having an associated seal status indication field;

  a database query server communicative to said bid database for querying said bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed by said seal status indication field, said trader representing a intermediary third party between a bidder and a offeror; and

  an bid communicator for presenting said queried unsealed bids to said trader thereby preventing presentation of sealed bids to a trader.

Claim 14 (original):

 The sealed bid sales offering system as set forth in Claim 13 wherein said sales offering system is a computer network server.

Claim 15 (original):

 The sealed bid sales offering system as set forth in Claim 14 wherein said computer network server is an Internet server.

Claim 16 (original):

 The sealed bid sales offering system as set forth in Claim 14 wherein said computer network server is a Hyper Text Transfer Protocol (HTTP) server.

Claim 17 (original):

 The sealed bid sales offering system as set forth in Claim 13 wherein said sales offering system is adapted for communications with trader console computers which are web browser devices.

Claim 18 (original):

 The system as set forth in Claim 13 wherein said database query server is adapted to retrieve unsealed bids from said bid database for presentation to a trader which meet criteria including a match with a trader's location code.

Claim 19 (original):

    The system as set forth in Claim 13 wherein said database query server is adapted to retrieve unsealed bids from said bid database for presentation to a trader which meet criteria including a match with a trader's goods category code.

Claim 20 (original):

    The system as set forth in Claim 13 further comprising a restricted access administrator console communicative with said bid database for allowing conversion of sealed bids to unsealed bids.

Claim 21 (original):

    The system as set forth in Claim 13 further comprising a system clock or timer for use by said database query server communicative to determine which seals of sealed bids have expired as a criteria for retrieving unsealed bids.

Evidence Appendix
per 37 CFR §41.37(c)(1)(ix)

No evidence has been submitted by applicant or examiner pursuant to 37 CFR §§1.130, 1.131, or 1.132.

Related Proceedings Appendix
per 37 CFR §41.37(c)(1)(x)

No decisions have been rendered by a court or the Board in the related proceedings as identified under 37 CFR §41.37(c)(1)(ii).